

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JAMES SEABA and  
CORY PHILLIPS,

Plaintiffs,

v.

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

**MESOSYSTEMS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND  
FOR ATTORNEYS' FEES AND COSTS AS A SANCTION  
FOR PLAINTIFFS' ABUSE OF THE DISCOVERY PROCESS**

Pursuant to Federal Rules of Civil Procedure Rule 37(b)(2)(C) and Rule 37(c)(1), defendant MesoSystems Technology, Inc., ("MesoSystems") hereby moves the Court for an Order dismissing Plaintiffs' Complaint, with prejudice, for Plaintiffs' repeated abuses of the discovery process. As discussed in the accompanying brief in support of this Motion, Plaintiffs have engaged in a pattern of providing false answers under oath to MesoSystems' written discovery requests, at their oral depositions and in pleadings filed with the Court. In light of the nature of Plaintiffs' conduct, they have engaged in a pattern of spoliation of evidence which clearly demonstrate Plaintiffs' intention to destroy and hide evidence that is highly damaging to their position in this action.

**WHEREFORE**, MesoSystems hereby respectfully moves the Court to dismiss Plaintiffs' action as a sanction for their repeated abuses of the discovery process, perjury and spoliation of evidence. MesoSystems also requests an award of the attorneys' fees and costs incurred in defending this litigation, including the costs incurred in uncovering Plaintiffs' deception, and for any other relief the Court deems just and proper.

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DATED: April 22, 2003.

BAUMAN, DOW, McINTOSH & LEÓN, P.C.

By: 

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I HEREBY CERTIFY that a true  
and correct copy of the foregoing  
was hand-delivered to counsel of record  
this 22<sup>nd</sup> day of April, 2003.

  
Alberto A. León